SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA,
Appellant,

vs.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO DISMISS OR AFFIRM

HOWARD ELLIS,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

YELLOW CAB COMPANY, ET AL.,
Defendants-Appellees

MOTION TO DISMISS OR AFFIRM

The defendants move, pursuant to Rule 12, paragraph 3, and Rule 7, paragraph 4, of the Supreme Court Rules, to dismiss the appeal taken by the plaintiff January 27, 1947 from the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, entered December 2, 1946, dismissing the complaint in this action, or to affirm said judgment, on the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

YELLOW CAB COMPANY, ET AL.,
Defendants-Appellees

MOTION TO DISMISS OR AFFIRM

Introductory

The defendants-appellees (referred to as defendants) move under Rule 12, paragraph 3, and Rule 7, paragraph 4, of the Rules of this Court, to dismiss this appeal or affirm the judgment appealed from, on the ground that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

This is a direct appeal, taken January 27, 1947, from a judgment of the District Court for Northern Illinois, entered December 2, 1946, dismissing the complaint, under Rule 12(b) of the Rules of Civil Procedure, for failure to

state a claim upon which relief can be granted. The complaint asserts an equitable action for claimed violations of Sections 1 and 2 of the Sherman Act (26 Stat. 209, 15 U. S. C. A. §§ 1, 2). Jurisdiction for such review is based on Section 2 of the Expediting Act (32 Stat. 823, 15 U. S. C. A. § 29) and Section 238 of the Judicial Code (36 Stat. 1157, 28 U. S. C. A. § 345).

Statement of the Case

The complaint charges that the defendants have conspired to restrain and monopolize interstate trade and commerce (a) in the business of furnishing cab services for hire in Chicago; and (b) in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Pittsburgh, New York, and Minneapolis.

The defendant Yellow Cab Company (referred to as Yellow) and the defendant Cab Sales & Parts Corporation (referred to as Checker) operate taxicabs in Chicago, pursuant to licenses issued by the City of Chicago. All of Yellow's stock is owned by the defendant Chicago Yellow Cab Company which is included in the designation Yellow; and Checker's taxicab licenses are leased from the defendant Checker Taxi Company which is included in the designation Checker.

The defendant Parmelee Transportation Company (referred to as Parmelee) operates unlicensed limousine-coaches in Chicago, which transport railroad passengers between Chicago railroad stations, pursuant to contracts with railroads; and also owns subsidiaries which operate or manage the operations of a number of taxicabs in New York, Pittsburgh and Minneapolis.

The defendant Checker Cab Manufacturing Corporation (referred to as CCM) manufactures cabs in Michigan and sells them. The individual defendant Morris Markin is

president of CCM and is included in the designation CCM.

The complaint charges, and for the purposes of this motion the defendants concede, that CCM has acquired stock control of Yellow, Checker and Parmelee.

Operations of taxicabs in Chicago are comprehensively regulated by ordinances of the City of Chicago (Ordinance of September 25, 1929 (Mun. Code of Chicago (1931 ed.) Chap. 41); Ordinance of May 18, 1934 (Mun. Code of Chicago, Chap. 195A); Ordinance of December 22, 1937 (Mun. Code of Chicago, Chap. 196A); Ordinance of June 26, 1945 (Mun. Code of Chicago, Chap. 196A)). These ordinances place limitations on the number of taxicab licenses which may be issued (subject to increases, on showing of public convenience and necessity); establish rates and standards of service; and otherwise provide for detailed regulation.

The 1937 ordinance, subsequently extended in 1945, reduced the number of outstanding taxicab licenses to 3,000, through voluntary surrenders by licensees; and granted the surrendering licensees a prior right to new licenses, on any subsequent increase, equal to the number of licenses surrendered by them.

Yellow presently owns 1,595 Chicago licenses and has priority rights to 571 new licenses. Checker presently owns 1,000 Chicago licenses and has priority rights to 500 new licenses.

On January 22, 1947, the Supreme Court of Illinois, affirming a decision of the Illinois Circuit Court rendered February 5, 1946, held that the mentioned ordinances, and Yellow and Checker's license and priority rights under such ordinances, were valid; and that no monopoly existed, since the number of licenses and the rights of the licensees were subject to the control of the City of Chicago. *Yellow Cab Co. v. City of Chicago*, copy of opinion is appended.

This opinion describes the taxicab history and ordinances of the City of Chicago, and discloses how these ordi-

nances were adapted to the emergencies of changing times and conditions.

The violations of the Sherman Act claimed by the plaintiff are (1) that Yellow and Checker, by asserting their license and priority rights, excluded others from possible participation in the limited number of outstanding licenses; (2) that Yellow and Checker, licensees, will not compete with Parmelee, a non-licensee, for contracts with railroads to transport railroad passengers between Chicago railroad stations, and Parmelee, a non-licensee, will not compete with Yellow or Checker, licensees, for general taxicab business in Chicago; and (3) that CCM acquired stock control of Yellow, Checker and Parmelee with the purpose and result that they purchase their requirements of cabs only from CCM.

ARGUMENT

I

Neither the assertion by Yellow and Checker of the license and priority rights conferred on them by the ordinances of the City of Chicago, even to the exclusion of other potential licensees, nor their operations under such ordinances, constitute a restraint or monopoly under the Sherman Act.

The validity of Yellow and Checker's license and priority rights under the ordinances of the City of Chicago has specifically been established by the mentioned decision on January 22, 1947 of the Supreme Court of Illinois, *Yellow Cab Co.* v. *City of Chicago.*

It is likewise established that the Sherman Act does not operate against any rights or restraints flowing from State or local regulation. *Parker* v. *Brown*, 317 U. S. 341 (1943); *Field* v. *Barber Asphalt Paving Company*, 194 U. S. 618 (1904).

An argument of the plaintiff asserting violations of the Sherman Act derived from the exercise by Yellow and Checker of their license and priority rights or operations under the municipal ordinances raises, therefore, no substantial question.

II

The furnishing of taxicab services in Chicago is not interstate commerce and accordingly is not subject to the Sherman Act.

The complaint alleges that the defendants conspired to restrain and monopolize "interstate trade and commerce" in the business of furnishing cab services for hire in Chicago. In the court below, the plaintiff specifically limited the "interstate commerce" so alleged to "the transportation by cabs of interstate railroad passengers between, to and from railroad stations in Chicago." The plaintiff conceded that the commerce which is the subject of the claimed violations is not interstate railroad transportation; this concession obviously resulted from the utter lack of any suggestion that the defendants had in any respect monopolized or restrained railroad transportation. The plaintiff also conceded in the court below that, disconnected from interstate railroad transportation, the general taxicab business in Chicago is local commerce.

The question thus presented is—Does the defendants' Chicago taxicab business become interstate commerce because, or to the extent that, some of their taxicabs sometimes carry passengers who have been, are, or are about to become interstate railroad passengers?

The nature of the defendants' taxicab services is stated in the opinion of the court below:

> "The following facts either appear in the complaint, are of common knowledge, or have been admitted in

briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies."

The contention of the plaintiff that the furnishing of such cab services in Chicago is itself interstate commerce raises no substantial question.

The instant case is an *a fortiori* application of the decision of this Court in *New York ex rel. Pennsylvania Railroad Company* v. *Knight*, 192 U. S. 21, 27-28 (1904). In the *Knight* case a taxicab service maintained by the railroad to transport passengers between their homes and hotels in New York City and the railroad terminal, but conducted "wholly within the state" and without "contractual or necessary relation" to the interstate railroad transportation, was held "an independent local service, preliminary or subsequent to any interstate transportation". In *Stafford* v.

Wallace, 258 U. S. 495, 528 (1922), this Court said of the taxicab service in the *Knight* case:

> "This court held that because it was independent of the railroad transportation, and not included in the contract of railroad carriage, it did not come within interstate commerce."

Similarly, in *Swift & Co.* v. *United States*, 196 U. S. 375, 401 (1905), this Court considered the *Knight* case as involving an "independent matter" from railroad transportation. *United States* v. *Capital Transit Company*, 325 U. S. 357 (1945), referred to by the plaintiff, presented a different question. There a bus company maintained local transportation as an integrated part of its District of Columbia-Virginia bus service. Joint fares were prescribed by the Interstate Commerce Commission in connection with the District-Virginia transportation, and discrimination against other District-Virginia bus carriers was prohibited. In the instant case, there is neither connection between the defendant taxicab companies and any railroad, nor discrimination by the defendant taxicab companies against any railroad or railroad passenger.

III

The rendering of different services by Yellow-Checker and Parmelee does not result in a restraint or monopoly under the Sherman Act.

This question does not, of course, even arise if the claimed restraint flows from the ordinances of the City of Chicago (Point I above) or concerns local commerce (Point II above).

The complaint does not charge that the services rendered by Yellow, Checker and Parmelee are inadequate with respect to railroad passengers or discriminatory against them.

The sole charge is that Yellow and Checker will not compete with Parmelee for contracts with railroads to transport railroad passengers between Chicago railroad stations, and that Parmelee will not compete with Yellow or Checker for general taxicab business in Chicago.

This charge has no foundation. The statutes and businesses of Yellow and Checker differ sharply from that of Parmelee. As said by the court below:

> "It is a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered."

Yellow and Checker, as licensees, operate taxicabs for the general Chicago public. They are required by ordinance to carry "every person" to whatever destination he chooses within Chicago. Parmelee holds no licenses from the City of Chicago and does not operate taxicabs for the general Chicago public. It operates limousine-coaches only for railroad passengers and only between railroad stations. This sharp difference in status delineates the difference in business. The duties imposed by ordinance on Yellow and Checker to carry "every person" anywhere within Chicago cannot, as in the case of Parmelee, be restricted by contracts with railroads to the carriage of only railroad passengers only between railroad stations. Conversely, Parmelee, a non-licensee, cannot under the ordinances operate taxicabs for the general Chicago public. Subject, however, to the ordinances and contracts respectively binding them, Yellow, Checker and Parmelee offer their services to all railroad passengers at Chicago railroad stations and, in that respect, do compete.

The claimed restraint raises, therefore no substantial question.

IV

The purchase of cabs by Yellow, Checker and Parmelee exclusively from CCM does not constitute a monopoly or restraint under the Sherman Act.

The plaintiff concedes that CCM has no monopoly of either the manufacture or sale of cabs in the United States. The complaint does not allege any such monopoly; and official government records disclose that in 1942 over fifty thousand licensed taxicabs were in operation in the United States (Accomplishment Report for Year 1942, O.D.T., Division of Local Transport) plus many thousands of unlicensed taxicabs. The vast number of these taxicabs are the products of the major national automobile manufacturers, such as General Motors, Chrysler, Ford and Packard, and only an extremely small fraction of the total were manufactured by CCM. The complaint refers to four cities in which the defendants operate taxicabs. Chicago has already been considered. In New York, of 13,000 taxicab licenses, a subsidiary of Parmelee owns 2,000; in Minneapolis, of 214 taxicab licenses, a subsidiary of Parmelee owns 125. The complaint does not refer to licenses in Pittsburgh, but asserts merely that subsidiaries of Parmelee operate all Pittsburgh taxicabs; the number is not mentioned.

The Illinois Supreme Court said, in *Yellow Cab Company* v. *City of Chicago*, copy of opinion appended

> " . . . Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inas-

much as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1,000 pounds more than the average passenger car."

The violation of the Sherman Act asserted by the plaintiff is only this—that CCM, which is not a monopoly, acquired operating companies as subsidiaries, with the purpose and result that such operating companies purchase their requirements of cabs only from CCM. This charge, it is submitted, presents no substantial question.

The purchase of cabs from CCM by Yellow, Checker and Parmelee does not, of course, preclude any one else who so desires from purchasing CCM manufactured cabs. Exclusive purchases by subsidiaries are charged, but not exclusive sales by the parent.

Business expansion and integration through subsidiaries, affiliates or controlled outlets has long been recognized as lawful. *United States* v. *Winslow*, 227 U. S. 202, 217 (1913); *United States* v. *U. S. Steel Corporation*, 251 U. S. 417 (1920); *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, 510 (1915); app. dis'd, 257 U. S. 664 (1921); *United*

States v. *Paramount Pictures, Inc.*, 66 F. Supp. 323, 353-354 (1946).

Likewise has it been recognized that sales to and purchases by exclusive agents do not constitute a restraint of trade. *Federal Trade Commission* v. *Curtis Publishing Company*, 260 U. S. 568 (1923); *United States* v. *General Electric Company*, 272 U. S. 476 (1926); *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344 (1933).

The cases referred to by the plaintiff, including *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707 (1944) are totally dissimilar, and relate to resale price-fixing schemes. That is not this case. No resale is made by the operating subsidiaries of the cabs purchased from CCM. Further, the rates for taxicab services are fixed, not by the operating companies, but by the municipality. In fixing such rates the municipality may, of course, consider prices charged for taxicabs throughout the United States by the major national automobile manufacturers who dominate the industry. Indeed, the plaintiff's charge of monopolization or restraint of sales by CCM is an inversion, since CCM is so small a manufacturer in relation to the major national automobile manufacturers.

The plaintiff's charge concerning monopoly or restraint in the sale of cabs by CCM presents, therefore, no substantial question.

Conclusion

The motion to dismiss or affirm should be granted.

Respectfully submitted,

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APPENDIX

Opinion

SUPREME COURT OF ILLINOIS

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday the 13th day of January in the year of our Lord, one thousand nine hundred and forty-seven, within and for the State of Illinois.

Present: Walter T. Gunn, Chief Justice; Justice Clyde E. Stone, Justice Loren E. Murphy, Justice William J. Fulton, Justice Francis S. Wilson, Justice June C. Smith, Justice Charles H. Thompson. George F. Barrett, Attorney General. Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be It Remembered, that afterwards, to-wit, on the 22nd day of January, 1947, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 29686

YELLOW CAB COMPANY, a Corp., et al., Appellees,

vs.

CITY OF CHICAGO, a Municipal Corporation, et al., etc., Appellants.

Appeal from Circuit Court, Cook County

Docket No. 29686—Agenda 28—November, 1946.

Yellow Cab Company *et al.*, Appellees, v. The City of Chicago *et al.*, Appellants.

Mr. JUSTICE FULTON delivered the opinion of the court:

This is an appeal from the action of the circuit court of Cook county, granting to appellees a permanent injunction

restraining appellants from cancelling or causing to be cancelled any taxicab licenses of appellees pursuant to notices given to appellees by the public vehicle license commissioner of the city of Chicago as directed by resolution of the city council of the city of Chicago. Said injunction also restrained appellants from issuing or causing to be issued any permits or licenses pursuant to a resolution, order or ordinance of the city council of the city of Chicago, passed January 16, 1946, and restrained appellants from issuing any permits or licenses in excess of the total number of 3000 without first holding hearings with respect to the public convenience and necessity therefor and without first affording appellees an opportunity to apply for and obtain such licenses to the number thereof provided for in a previous ordinance of the city council, passed on December 22, 1937.

The validity of certain ordinances of the city of Chicago is challenged by the parties in this cause and the trial judge has certified that the public interest requires the appeal be taken directly to this court in view of the questioned validity of these municipal ordinances.

For a proper consideration and determination of the issues in this case it is necessary to review the action of the city of Chicago and of the appellees regarding the operation of taxicabs in that city during the past fifteen years. On May 18, 1934, the city council passed a comprehensive ordinance to regulate the operation of taxicabs in the city of Chicago. This ordinance provided for the issuance of licenses to operate taxicabs in the city for a term ending December 31, 1940, unless sooner terminated or revoked as provided in the ordinance. The ordinance provided for the payment of license fees and the establishment of taxicab rates to be charged uniformly by all taxicabs, limited the number of passengers to be carried in each cab, required the payment of judgments rendered for personal injury, property damage or wrongful death against any licensee, limited the hours of work of each driver and contained other provisions designed for the protection of the citizens of the city of Chicago. The ordinance also contained a provision that no licenses should be subsequently authorized except upon transfer to permit replacement of the taxicabs or in the annual renewal of such licenses unless the commissioner, after a hearing, found that public

convenience and necessity required additional taxicab service. No new licenses could be issued to any licensee unless he accepted this ordinance. This comprehensive ordinance also established a basis for making a determination as to the necessity and public convenience requiring licensing of additional taxicabs and provided that in the event of discontinuation of service of any taxicab excepting on account of strikes, acts of God, or anything beyond the control of the licensee the commissioner might give notice to the licensee to restore such taxicabs to service and the failure to restore such service within five days after notice would give the commissioner the discretion to recommend to the mayor that the license be revoked and the mayor in his discretion might revoke the same. This ordinance provided that it should be in full force and effect from and after its passage, if one or more persons, firms, or corporations operating taxicabs should within 60 days, file with the city clerk formal written acceptance of the same. Both appellees filed acceptances thereof.

Based upon this ordinance, 4108 taxicab licenses were issued in the city of Chicago. The Yellow Cab Company received 2166 licenses and the Checker Taxi Company received 1500 licenses. Subsequent operation of taxicabs in the city of Chicago resulted in unprofitable operations from the standpoint of the drivers and the licensees, resulting in strikes and other violence on the city streets, and in 1937 it was determined that a reduction in the number of taxicabs operated in the city and an increase in the fares charged was in the public convenience and necessity. Thereafter on December 22, 1937, the city council passed an ordinance providing for a method of voluntary surrender by licensees of enough of their licenses to reduce the total from 4108 to 3000. This ordinance provided that in the event the number of authorized licenses should later be increased above the 3000 figure said licenses, to the number surrendered, should first be issued to licensees ratably in proportion to the number voluntarily surrendered by each licensee. The ordinance likewise provided that authority of the licensees to operate taxicabs under the 1934 ordinance be extended to December 31, 1945, provided the licensees accepted the terms of the 1937 ordinance.

The Yellow Cab Company voluntarily surrendered 571 of its licenses and the Checker Taxi Company surrendered 500 of its licenses. Other licensees surrendered the balance of the required reduction. The appellees and other licensees continued to operate under this 1937 ordinance. The evidence shows that in 1940 and in 1941 appellees replaced their taxicab fleets in the city with new equipment, but since that time due to economic restrictions occasioned by World War II they have been unable to obtain new equipment customarily used by them for taxicab purposes. The evidence shows that the average life expectancy of a taxicab in the city of Chicago is about three years and that those operated in the city by appellees at the time of the hearing in this case have exceeded their life expectancy by more than 1½ years.

With the end of the war it was thought that appellees and others would be able to replace their taxicab fleets with new equipment and on June 21, 1945, the city council passed an extension ordinance extending the term of the ordinance of 1937 for five years, ending December 31, 1950. This action of the city council was preceded by pledges made to the city by appellees that they would replace their fleets with new equipment as soon as possible.

On December 28, 1945, the city council passed a resolution reciting that demands for all forms of local transportation had increased on account of World War II and directed the commissioner to enforce the provisions of the 1937 and 1945 ordinances by compelling full operation of 3000 taxicabs in the city by January 15, 1946. In the event that full operation of said taxicabs could not be accomplished, the commissioner was authorized to take steps for licensing additional taxicabs in the city.

On January 16, 1946, the city council passed the following: "ORDERED, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally through the city." On January 22, 1946, the commissioner addressed a letter to each of the appellees advising them that

his office had surveyed their records and that the Yellow Cab Company had 234 taxicabs and the Checker Taxi Company had 87 taxicabs which had not been operating. He directed that they be placed in operation within five days or the licenses for said cabs would be cancelled.

Appellee Yellow Cab Company filed its complaint for injunction on January 24, 1946. Subsequently, appellee Checker Taxi Company was given leave to appear as a plaintiff. In their complaints as amended, appellees alleged the existence of the various ordinances and actions by the city council and the public vehicle license commissioner, and in addition, alleged that they had invested several million dollars in taxicab equipment, real estate and property; had acquired contract rights; had complied with all ordinances; had given up licenses under the 1937 ordinance, and had ordered new fleets of taxicabs, relying on their contract rights. They also alleged that the action of the defendants in attempting to cancel their licenses and to issue additional permits, interfered with and violated their contract rights secured to them by the State and Federal constitutions, and would cause irreparable harm, injury and damage to their goodwill, business and investments, and that they had no adequate remedy at law.

The defendants filed a motion to dismiss the complaints and also filed answers to the complaints and amendments thereto. By these pleadings the defendants contended that the complaints were filed prematurely; that no cause of action existed at the time of filing the complaints; that a court of equity had no jurisdiction to restrain a legislative body from exercising its governmental or legislative functions; that the ordinances of 1934, 1937 and 1945, are void; that the city of Chicago does not have authority to prohibit, exclude or limit the number of motor vehicles for hire upon the streets without equal application to all citizens; that said ordinances in effect grant an absolute monopoly denying to all citizens the equal protection of the laws and are contrary to the public policy of the State of Illinois, and constitute class legislation; that said ordinances delegate legislative powers to unnamed individuals to arbitrarily determine if said ordinances would become a law at sometime in the future, and that said ordinances

are *ultra vires*, because the city attempted to part with or abdicate its legislative and governmental powers.

After a hearing, the court enjoined the defendants as above set forth. From the evidence it appears that the appellees are unable to operate 321 taxicabs by reason of their inability to obtain repairs and replacement parts for said vehicles. This inability has been occasioned by the economic restrictions incident to World War II and is beyond the power of appellees to remedy. Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inasmuch as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car.

The appellants contend in this court that:

1. The trial court has no jurisdiction to enjoin the exercise of the legislative, governmental, and discretionary functions of the city council and public officials.

2. The resolution of the city council requiring 3000 taxicabs be put into service on or before January 15, 1946, is a valid and proper exercise of the legislative function of the city council.

3. The ordinance of January 16, 1946, authorizing and directing the public vehicle license commissioner to issue 250 permits for operation of taxicabs in the city of Chicago is valid and is a proper exercise of the legislative power of the city council.

4. The ordinances of the city of Chicago of May 18, 1934, December 22, 1937, and June 21, 1945, providing for the issuance of licenses and regulation of the taxicab business in the city of Chicago are null and void.

The appellees contend that the action of the trial court should be affirmed for the following reasons:

The inoperability of 321 taxicabs was beyond the control of appellees and, therefore, no action could be taken by appellants toward the cancelling of such licenses.

2. The action of the city council of January 16, 1946, in authorizing and directing the issuance of 250 permits for the operation of taxicabs in the city of Chicago is void because there is no finding that public convenience and necessity required the issuance of additional taxicab licenses; the ordinance is vague and uncertain, it is discriminatory, does not afford appellees the right to apply for permits or licenses in excess of the 3000 as guaranteed by the 1937 ordinance, and it violates and ignores appellees' contract rights secured by the Federal and State constitutions.

3. The ordinances of 1934, 1937 and 1945 are all valid and constitute binding contracts between the city and appellees.

As to the contention that the trial court had no jurisdiction to grant the injunction in this case on the ground that it interfered with the exercising of legislative, governmental and discretionary functions of the city council, we cannot agree. Appellees have not sought to enjoin the city council from acting upon the question of taxicabs and

their regulation. Appellees have merely sought to enjoin the city and its officials from taking action based upon ordinances or resolutions of the city council which appellees contend are invalid. The case of *Fletcher* v. *City of Paris*, 377 Ill. 89, cited by appellants and relied upon heavily by them, is authority for the proposition that equity cannot enjoin the holding of an election for the adoption of an ordinance nor can equity enjoin the passage of legislation, inasmuch as the holding of an election is the exercise of a political right and equity will not interfere in a case affecting the enjoyment of political rights where the holding of an election is a necessary step in the legislative process of adopting and bringing into existence a municipal ordinance. Likewise that case holds that inasmuch as the judiciary has no supervision of the legislative branch of the government, courts will not enjoin the passage of legislation, since the restricting power of courts is against the enforcement rather than the passage of unauthorized orders, resolutions or ordinances of municipal corporations. In the case at bar the injunction does not restrict the city council from enacting such ordinances or resolutions as it might care to regarding the regulation of taxicabs in the city of Chicago. It merely restricts the action of the city and the license commissioner, the city clerk and the mayor from taking certain action in the nature of enforcing ordinances or resolutions previously adopted by the city council.

Appellees in this case could properly maintain this action since they are in immediate danger of sustaining direct injury as a result of the enforcement and carrying out of the resolutions of the city council of December 28, 1945, and January 16, 1946. *Fletcher* v. *City of Paris*, 377 Ill. 89.

We cannot agree with appellants' contention that the city of Chicago cannot limit or restrict the number of taxicabs which are to be operated upon the streets of the city of Chicago. In the case of *People ex rel. Johns* v. *Thompson*, 341 Ill. 166, this court had before it for consideration the validity of an ordinance regulating taxicabs, passed September 25, 1929, which contained provisions similar in many respects to the ordinances of 1934, 1937 and 1945, the validity of which are questioned in this proceeding. In that case we upheld the validity of that ordinance and we

stated, "The ordinanee is not discriminatory on the ground that it singles out taxicabs for regulation and does not apply to private vehicles or other public vehicles drawn by horses. No one has any inherent right to use the streets or highways as a place of business. Where one seeks a special or extraordinary use of the streets or public highways for his private gain, as by the operation of an omnibus, truck, motorbus or the like, the State may regulate such use of the vehicle thereon or may even prohibit such use." We also held in that case that the power of the city to pass the ordinance in question had been authorized under the Cities and Villages Act then in force. We likewise held that the right to regulate includes the right to impose reasonable conditions and restrictions and that the power to regulate the use of streets by vehicles included the power to promote the general welfare and prevent accidents, and that the reasonableness of police regulation is not necessarily what is fairly appropriate under all circumstances. Certainly, the city of Chicago, having the right to regulate traffic and parking, to build bridges, viaducts, tunnels and sewers, to select streets for through or local traffic, to levy a city vehicle tax, to provide for the underground laying of wires or other facilities in the street and to provide for the general policing of the city, could, in the exercise of its powers conferred upon it by the legislature, properly determine the number of taxicabs which it would permit to be operated in the city of Chicago. Any conclusion other than this would render ineffective the authorizations by the legislature to the city for the regulation of traffic and parking and the policing of the city. It is well known and this court takes judicial notice of the facts that there are numerous congested areas in the city of Chicago and that the very nature of the taxicab business contributes to this traffic congestion.

Appellants contend that the ordinances of 1934, 1937 and 1945, providing for the regulation and licensing of taxicabs in the city of Chicago, are invalid since such ordinances create, or attempt to create, a monopoly in the taxicab business in the city of Chicago. A careful study of the record indicates that at the time of the hearing in this cause there were 348 persons, firms or corporations, in-

cluding appellees, holding licenses for the operation of 3000 taxicabs in the city of Chicago. It is true that the vast majority of the 3000 licenses are held by appellees, however no taxi operator and no person who desires to enter the taxicab business has, in this cause, complained of a monopoly. By these ordinances which are said to create a monopoly the city has reserved the right to fix fares and has the right to inspect the books and records of the various licensees. In addition, the city has reserved the right to issue, when authorized by general ordinance, additional licenses for the operation of taxicabs without the consent of any of the licensees. The sole restriction upon the city's right to issue additional licenses is that there shall be a finding of public convenience and necesssity for the additional licenses. In the case of *Capitol Taxicab Co.* v. *Cermak*, 60 F. 2d 608, involving a similar ordinance, the court stated, "To the argument that the ordinance tends to create a monopoly, it is sufficient answer that the city has not by its legislation surrendered its right to grant other and further certificates to all other applicants."

In the case at bar it is contended that the proviso contained in section 2 of the 1937 ordinance restricts the right of the city to issue additional taxicab licenses only to appellees. Section 2 of the ordinance of 1937 provides, "Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance."

The ordinance of 1937 was a general ordinance of general application and merely attempted to provide a method for meeting the difficulties incident to the operation of taxicabs resulting from a period of economic depression. This ordinance was passed for the purpose of establishing proper regulation for the taxicab business in the city of Chicago during a critical period. Anyone holding a taxicab license could have surrendered the same and would have been given protection in regaining the license as afforded by this ordinance. It should be borne in mind that at the time the 1937 ordinance was passed, all taxicab licenses in the city of Chicago did not expire until December 31, 1940, and, therefore, the city of Chicago could not legally at that time reduce the number of taxicab licenses in the city by general ordinance. Conditions demanded that the number of licenses be reduced immediately and in order to secure their reduction, this ordinance granting a preference to people who voluntarily surrendered licenses was enacted. The proviso giving to licensees surrendering taxicab licenses the right to regain their licenses, when the city of Chicago determines that additional licenses are to be authorized, merely gives to those people a preference for the period of 30 days after the publication of notice of public hearing upon the question of public convenience and necessity. Should these former licensees fail to apply for licenses within that 30-day period, then any one who desires to engage in the taxicab business can obtain a license providing he meets the general requirements of the ordinance. It is clear that no exclusive right to operate taxicabs has been granted to any person or corporation in expressed terms. The fact that appellees may be the only persons who surrendered taxicab licenses and are, therefore, the only persons entitled to the preference does not render the ordinance void, since the ordinance is of general application and since the preference in obtaining additional licenses is given only for a limited time and is based upon a valuable consideration. The city council of the city of Chicago, in the exercise of its legislative discretion, could well have determined that this ordinance was a proper exercise of its police power for the regulation of the taxicab business and the regulation of the traffic and congestion upon its

streets. It is not the province of this court to inquire as to the wisdom of passing the ordinance. As long as the same does not violate any constitutional limitation, it is a valid enactment, though the court might disagree with the wisdom of its provisions.

Appellants have also contended that the ordinances of 1934, 1937 and 1945 do not constitute contracts between the city and the operators of taxicabs, on the ground that the ordinances only refer a license and do not grant a franchise. A review of the authorities indicates that the distinction between a license and franchise has developed mainly by reason of the difference in the type of business performed. In the case of public utilities, almost without exception, the grant of authority to them to conduct business within the limits of a city is referred to as a franchise. On the other hand, the right of a theater, garage, restaurant, bowling alley and other businesses to engage in business is referred to as a license. Counsel have pointed out in great detail the distinction between franchises and licenses and have based much weight upon the fact that in a franchise the holder thereof can be compelled to operate his business while in the case of a license the licensee cannot be compelled to operate his business against his will. However, a review of the authorities in other States indicates that the terms "license" and "franchise" have been used often synonymously and that each State has a somewhat different meaning for the two terms.

The question to be determined in the case at bar is whether or not a licensing ordinance can constitute a contract between the city and the licensees. It is the opinion of this court that the licensing ordinances in the case at bar did create a contract between the city and the licensees. In the case of *Peoria Railway Co.* v. *Peoria Railway Terminal Co.* 252 Ill. 73, we held that the privilege to use the streets of a city having been granted by an ordinance was not recoverable at the will of the city after it had been accepted by the licensee. We also held that where the license had been acted upon in a substantial manner and the revocation thereof would be inequitable, the same could not be revoked. This court in the case of *American Can Co.* v. *Emerson*, 288 Ill. 289, held that a license granted

to a foreign corporation to do business in the State of Illinois constitutes a contract between the foreign corporation and the State of Illinois. It being the opinion of this court that the ordinances granting licenses to appellees and others operating taxicabs in the city of Chicago constitute a valid contract between appellees and the city of Chicago, and it being the opinion of the court that such ordinances are not illegal as being beyond the power of the city to enact, we pass to the question of the delegation of power under the ordinances and we find that the delegation of power to the commissioner herein is not illegal. In the case of *People* v. *Thompson*, 341 Ill. 166, we considered the delegation of power under a similar ordinance regulating taxicabs in the city of Chicago and held that such delegation was proper. The only material difference between the provisions of the ordinance there questioned and the ordinances here, as to the delegation of power, is that in that case the power was given to a commission. We do not regard this difference as being material, inasmuch as proper standards for the action of the commissioner have been established by the ordinances.

Appellants have also contended that the action of the chancellor in holding invalid the order of the city council of January 16, 1946, authorizing the issuance of 250 taxicabs "permits," should be reversed. It is the opinion of this court that this action of the chancellor should likewise be affirmed. In view of the previous finding by the city that public convenience and necessity required the operation of 3000 taxicabs in the city of Chicago, and in view of appellees' admitted inability to keep all of their taxicabs in operation, due to conditions beyond their control, the city could properly provide for the issuance of temporary permits during a critical period when it was impossible to keep in operation all of the taxicabs theretofore licensed. However, the operation of such additional taxicabs authorized by the city council to bring the total number of cabs in operation to the necessary 3000 should be subject to the conditions of the general ordinance regulating the taxicab business in the city of Chicago. Certainly, the temporary permittees should be compelled to charge the same fares, submit to the same regulation and abide by the same safety

precautions as provided in the general ordinance. The action of the city council of January 16, 1946, does not in any way attempt to bring the temporary permittees under the same regulation as other taxicabs operating in Chicago, nor does this action provide for a termination of these permits when taxicab licensees are able to furnish the service which public convenience and necessity requires. The chancellor properly held this action of the city council invalid.

Appellees have raised many other arguments as to the validity and the propriety of the chancellor's action, which have received careful consideration, but, in view of our decision on the points heretofore discussed, it would serve no useful purpose to further lengthen this opinion by a piecemeal discussion thereof. For the reasons which we have heretofore stated, the decree of the circuit court of Cook county is affirmed.

Decree affirmed.